



ATTORNEY GENERAL OF MISSOURI
ERIC SCHMITT

October 5, 2021

Attorney General Merrick B. Garland
U.S. Department of Justice
950 Pennsylvania Avenue NW
Washington, D.C. 20530

Dear Attorney General Garland:

Yesterday, you directed the FBI, all U.S. attorneys, and other members of the Justice Department to investigate and prosecute parents as domestic terrorists for daring to advocate for their kids. This is outrageous and an unconstitutional expansion of federal power. I will stand up for parents and fight any attempts by the Biden Administration to silence them.

First, the federal government does not have jurisdiction over local school issues. Your directive came just days after the National School Boards Association called on the Biden Administration to investigate and prosecute parents as domestic terrorists. *See* NSBA letter to President Biden, Sept. 29, 2021. The NSBA asked for the U.S. Department of Justice, Federal Bureau of Investigation, U.S. Department of Homeland Security, U.S. Secret Service, and the U.S. Postal Inspection Service to launch investigations under federal anti-terrorism and anti-hate crimes laws. The NSBA specifically called on the federal government to “protect interstate commerce” and to use laws such as the Gun-Free School Zones Act and the PATRIOT Act “in regards to domestic terrorism.”

The Supreme Court rejected the same interstate commerce act in a case involving the Gun-Free School Zones Act of 1990 more than 25 years ago. *See United States v. Lopez*, 514 U.S. 549, 551 (1995). In *Lopez*, the federal government argued that possession of a firearm around a school could affect interstate commerce through the economic effects resulting from violence or an impacted educational process. *Id.* at 563-64. The Supreme Court responded that “if we were to accept the Government’s arguments, we are hard pressed to posit any activity by an individual that Congress is without power to regulate.” *Id.* at 564. Instead, the Court held that the law was unconstitutional because it “neither regulates a commercial activity nor contains a requirement that the possession be connected in any way to interstate commerce.” *Id.* at 551.

Neither your directive nor the NSBA letter to the Biden Administration identifies any impact that parent comments to school bureaucrats could have on interstate commerce. It is difficult to imagine any such connection.

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Jurisdiction under the PATRIOT Act fares no better. That law was passed one month after the September 11, 2001 terrorist attacks to provide law enforcement with tools to prevent any future attacks on our country. It is ridiculous to think that a law designed to prevent another 9/11 could be used by the Biden Administration to prosecute parents who are advocating for the best interests of their kids.

Second, your directive appears designed to have a chilling effect on speech. Your directive makes only a passing reference to the freedom of speech protected by the First Amendment. But the First Amendment gives parents the right to voice their opinion to their elected officials, particularly when it comes to their kids' education. *Cf. New York Times Co. v. Sullivan*, 376 U.S. 254, 273 (1964) ("Criticism of their official conduct does not lose its constitutional protection merely because it is effective criticism and hence diminishes their official reputations."). As the Supreme Court reiterated just a few months ago, "When it comes to a person's beliefs and associations, broad and sweeping state inquiries into these protected areas discourage citizens from exercising rights protected by the Constitution." *Americans for Prosperity Found. v. Bonta*, 141 S. Ct. 2373, 2384 (2021) (internal citations and quotations omitted). Characterizing differences of opinion as violence or threats of violence is a heavy-handed attempt to chill parents from continuing to advocate for their kids.

Third, your directive is attempting to protect harmful decisions. The NSBA complained that school officials were facing public criticism for their decisions to require children wear masks and resistance to parents learning more about the curriculum being taught to their children. But parents should have the choice on whether their child should wear a mask all day in school. This is because the science shows that masks severely impact schoolchildren, causing them to suffer headaches, difficulty concentrating, impaired learning, drowsiness/fatigue, a reluctance to go to school, detrimental to communication skills, and less happiness. *See, e.g., Silke Schwarz et al., Coronakinderstudien co-Ki: Erste Ergebnisse Eines Deutschlandweiten Registers zur Mund-Nasen-Bedeckung (Maske) bei Kindern*, 169 MONATSSCHRIFT KINDERHEILKUNDE 353, 355 (2021) (studying mask use in 25,930 schoolchildren and finding that 68% "complained about impairments caused by wearing the masks" including "irritability (60%), headache (53%), difficulty concentrating (50%), less happiness (49%), reluctance to go to school/kindergarten (44%), malaise (42%)[,] impaired learning (38%) and drowsiness/fatigue (37%)"). The science also shows that children are at a significantly lower risk of contracting a serious illness due to COVID-19, that they do not generally spread the virus, even in school settings, and that masks are not effective in reducing the spread of COVID-19. *See, e.g., Marty Makary, Opinion, The Flimsy Evidence Behind the CDC's Push to Vaccinate Children*, Wall St. J. (July 19, 2021) ("Our report found a mortality rate of zero among children without a pre-existing medical condition such as leukemia."). I am fighting to stop these unlawful and harmful mandates in Missouri.

Parents should also have input on what is taught to their kids. The NSBA claims that "critical race theory is not taught in public schools and remains a complex law school and graduate school subject well beyond the scope of a K-12 class." This is false. Districts around the country have been exposed as teaching critical race theory. *Yes, Critical Race Theory Is Being Taught In Public Schools*, THE WASHINGTON EXAMINER (July 12, 2021), available at <https://www.washingtonexaminer.com/opinion/yes-critical-race-theory-is-being-taught-in-public-schools>. As I have said in comments to multiple federal agencies, the Biden Administration

should reject the imposition of critical race theory. *See* Schmitt Comment to the United States Department of Education, Docket No. ED-20210OESE-0033 (May 19, 2021); Comment by 20 Attorneys General to the United States Department of Education (same); Schmitt Comment to the National Aeronautics and Space Administration, Docket No. NASA-2021-0002 (July 12, 2021). And contrary to the views of some political candidates, parents should have input on what schools teach their children.

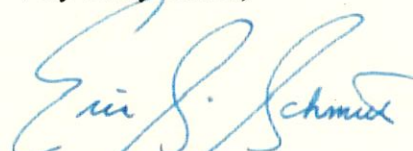
Fourth, your directive is wildly inconsistent. According to yesterday's directive, "The Department is steadfast in its commitment to protect all people in the United States from violence, threats of violence, and other forms of intimidation and harassment." In the last few days, radical activists have chased Senator Krysten Sinema into a restroom and harassed her in an airport and on an airplane. Other radical activists surrounded Senator Joe Manchin's houseboat on kayaks. President Biden laughed off this intimidation by saying "it happens to everybody" and "it's part of the process." The Justice Department has not directed the FBI and federal officials to investigate and prosecute these radical activists. Violence should not be tolerated, regardless of political persuasion. But apparently, the Biden Administration has different rules for parents trying to protect their kids and radicals trying to intimidate moderate senators.

Finally, your directive attempts to muzzle and intimidate parents, who are their own children's best advocates. Being a parent is the most important job in the world. Parents are responsible for providing for, protecting, educating, nurturing, and so much more that is required to raise their kids. Parents want what is best for their kids. And when parents become aware that school board decisions are harming their kids, such as by requiring masks or indoctrinating them with critical race theory, parents have the duty to speak out against those efforts.

As elected officials, school board members are directly accountable to the voters—parents—they represent. School boards are designed to receive and reflect parent input. Board meetings are supposed to be open to the public with the opportunity for public comment by parents. But now that parents are opposing harmful decisions made by school boards, school boards want to treat parents as domestic terrorists. That is wrong.

The Justice Department should not use the threat of federal prosecution to insulate school bureaucrats from policy criticisms by parents. I urge you and the Biden Administration to prioritize parents over school bureaucrats.

Very Truly Yours,



Eric S. Schmitt
Attorney General of Missouri